

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-144-C - ORDER NO. 2010-231

MARCH 30, 2010

IN RE:	Application of TracFone Wireless, Inc. for)	ORDER APPROVING
	Designation as an Eligible)	SAFELINK WIRELESS,
	Telecommunications Carrier in the State of)	INC. AS AN ETC
	South Carolina for the Limited Purpose of)	
	Offering Lifeline Service to Qualified)	
	Households)	

This matter comes before the Public Service Commission of South Carolina (“Commission”) and concerns the above-captioned application of TracFone Wireless, Inc. (“TracFone”) filed with the Commission on April 1, 2009, for designation as an Eligible Telecommunications Carrier (“ETC”) pursuant to 47 U.S.C. § 214(e)(2) and the request jointly filed with the Commission on January 27, 2010, by TracFone and by SafeLink Wireless, Inc. (“SafeLink Wireless” or “SafeLink”). TracFone and SafeLink have asked the Commission to approve the assignment of the above-captioned ETC application from TracFone to SafeLink Wireless, and to then designate SafeLink Wireless as an ETC for the limited purpose of offering Lifeline service to qualified low-income South Carolina households.

For reasons explained in this order, the Commission has concluded that assignment of the ETC application to SafeLink Wireless and designation of SafeLink Wireless as an ETC would serve the public interest.

BACKGROUND

The proposal to assign the ETC application to SafeLink Wireless and to designate SafeLink Wireless as an ETC is the result of negotiations which occurred between TracFone and the Office of Regulatory Staff (“ORS”). ORS and TracFone submitted a Joint Proposal to the Commission on December 16, 2009. The results of those negotiations are described more fully in the letter filed with the Commission on January 27, 2010, and the accompanying verified testimony of TracFone’s President and Chief Executive Officer, F.J. Pollak. As noted in his testimony, Mr. Pollak also serves as President, SafeLink Wireless.

By Directive dated February 3, 2010, the Commission instructed SafeLink to provide public notice and opportunity to intervene since the ETC designation would be awarded to a different entity than that which initially applied for ETC designation. The Commission appointed Hearing Officer Randall Dong to facilitate the drafting and filing of the required notice. SafeLink was required to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. The Company complied with this instruction and provided the Commission with proofs of publication of the Notice of Filing on March 5, 2010. No petitions to intervene were received. ORS is a party pursuant to statute.

SafeLink Wireless is incorporated under the laws of the State of Delaware and is registered with the South Carolina Secretary of State to transact business as a foreign

corporation in the State of South Carolina. SafeLink Wireless is a wholly-owned subsidiary of TracFone.

Unlike TracFone, SafeLink Wireless will not provide wireless telecommunications service to the general population of South Carolina. Rather, it will operate only as an ETC and will offer Lifeline service supported by the federal Universal Service Fund to qualified low-income South Carolina households. Like other wireless carriers (Commercial Mobile Radio Service providers) who are designated ETCs, SafeLink Wireless will contribute to the South Carolina Universal Service Fund on revenues which it earns from South Carolina customers.

In addition, SafeLink Wireless has proposed to modify the SafeLink Wireless® Lifeline program initially proposed by TracFone in several respects. First, in addition to providing qualified Lifeline customers with free handsets and 65 minutes per month of wireless airtime, SafeLink Wireless will allow Lifeline customers to purchase additional minutes of airtime at the per minute rate of \$0.10. Second, SafeLink Wireless will provide quarterly reports to the Commission and to the ORS. As described in Mr. Pollak's testimony and in the Joint Proposal, those reports will include information in the aggregate number of Lifeline customers by county receiving SafeLink Wireless® service; the method of eligibility verification provided by customers at activation; the aggregate number of Lifeline customers by county verified during each period; and the outcome of the verification process. In addition, one year following designation of SafeLink Wireless as an ETC, representatives of the company and ORS will meet to review the program.

ANALYSIS

A. Federal Statutory Requirements

In Section 214(e)(2) of the Federal Act, Congress authorized State commissions, consistent with the public interest, convenience, and necessity to designate a common carrier as an ETC if the carrier meets the requirements of Section 214(e)(1). Section 214(e)(1) provides:

(1) Eligible Telecommunications Carriers

A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received:

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier);

(B) advertise the availability of such services and the charges therefore using media of general distribution.

A telecommunications carrier may be designated as an ETC, and receive universal service support, so long as it offers, within a service area, the services that are supported by federal universal service support mechanisms under Section 254 (c) of the Federal Act, and so long as it adequately advertises the availability of, and the charges for, such services. The Commission notes that SafeLink bears the burden of proving that it has met each of the necessary elements required for ETC designation unless otherwise

exempted by the FCC. TracFone asserts that the forbearance of the facilities-based requirement which the FCC granted to TracFone applies to its subsidiaries including SafeLink. (Verified Testimony of Mr. Pollak, page 4).

1. Service Area

Section 54.207 of the FCC's rules defines a "service area" as a "geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms." 47 C.F.R. § 54.207(a). For service areas served by a non-rural incumbent local exchange company ("ILEC"), there are no restrictions on how a Commission identifies a "service area" for purposes of designating a competitive ETC. SafeLink has requested state-wide ETC designation. No party opposes SafeLink's service area designation. The Commission finds that SafeLink has met the service area requirement.

2. Required Service Offerings

The services to be supported by the USF under Section 254(a) are principally enumerated in Section 54.101(a) of the FCC's Rules, 47 CFR 54.101(a), as follows:

- (a) Voice grade access to the public switched network;
- (b) Local usage;
- (c) Dual tone multi-frequency signaling or its functional equivalent;
- (d) Single-party service or its functional equivalent;
- (e) Access to emergency services;
- (f) Access to operator services;
- (g) Access to interexchange service;
- (h) Access to directory assistance; and

- (i) Toll limitation for qualifying low-income consumers.

As set out in its application and testimony of Mr. Pollak, SafeLink will offer the services enumerated above by reselling wireless services, and has obtained a forbearance of the facilities based requirement from the FCC. Unlike any ILECs' or other ETCs' Lifeline plans, SafeLink's Lifeline offerings will go beyond those of other providers in a very important respect: SafeLink's Lifeline customers will receive as part of Lifeline service specified amounts of free wireless service. That is, Lifeline customers will be able to use SafeLink's service to initiate and receive specified amounts of wireless calling -- local and long distance, including international calls to more than 60 destinations -- with no charge to the customers.

With regard to 911 and E911 Emergency Services, SafeLink provides universal access to the 911 system for its customers. SafeLink has implemented and commits that it will continue to implement enhanced 911 services consistent with the FCC's Rules and orders applicable to wireless resellers. Given that SafeLink is a reseller, it does not own or operate any facilities. Therefore, the requirement in South Carolina regulations that SafeLink demonstrate that it has a reasonable amount of back-up power, an ability to reroute traffic around damaged facilities, and a capability to manage traffic spikes is not applicable. However, SafeLink asserts that it has the ability to remain functional in emergency situations. SafeLink will provide service in South Carolina by reselling the services of underlying wireless network carriers, including AT&T Wireless, T-Mobile, US Cellular, and Verizon Wireless. Those network operators have implemented state-of-the-art network reliability standards.

As to toll limitation services, SafeLink asserts that there is no need for it to offer a toll limitation feature to qualifying low-income customers. Since SafeLink's service is a prepaid service, no customers will be disconnected for failure to pay toll charges or, for that matter, any other charges. SafeLink treats long distance minutes of use as any other usage and the customers are not subject to additional charges for toll services.

Accordingly, the Commission finds that SafeLink meets the requirements to provide the supported services in the areas for which it seeks ETC status.

3. Required Advertising

In addition to the foregoing service offerings required by Section 214(e)(1)(A) of the Federal Act, FCC rules (CFR Parts 54.405 and 54.411) provide that an ETC must also publicize the availability of Lifeline and Link-Up services "in a manner reasonably designed to reach those likely to qualify for the service." SafeLink provided evidence showing that it will advertise the availability and terms of its services throughout its designated area (Pollak Direct Testimony, pages 9-10). The Commission concludes that SafeLink has demonstrated that it will publicize the availability of Lifeline in a manner reasonably designed to reach those likely to qualify for the service, as directed by CFR §54.405 and 54.411.

4. The Public Interest Requirement

In the instant case, SafeLink has demonstrated that its application for ETC designation is in the public interest. The Joint Proposal submitted by TracFone and the ORS is just and reasonable. SafeLink has assured us that all support received by the

carrier is used to provide Lifeline services to consumers, thus promoting Lifeline and the availability of telephone service to low income users.

In the Commission's view, the designation of SafeLink as an ETC will increase customer choice for low income consumers eligible for Lifeline support in the areas requested. We note that in addition to providing qualified Lifeline customers with free handsets and 65 minutes per month of wireless airtime, SafeLink Wireless will allow Lifeline customers to purchase additional minutes of airtime at the per minute rate of \$0.10. Customers who can obtain this telecommunications service will likely benefit from additional rate plan options and increased access to emergency services.

The Commission notes that SafeLink's specific voluntary commitment to comply with the guidelines in the ETC order - and specifically with the ORS' tailoring of those guidelines to fit both the Commission's existing rules and orders and the particular circumstances of SafeLink's application - is a critical component supporting a positive public interest finding. SafeLink shall comply with the Commission annual filing requirements set forth in R103-690.1

Thus, subject to the commitments and conditions discussed in this Order, the Commission concludes that SafeLink has shown that its designation as an additional ETC is in the public interest for its proposed ETC designated area.

Furthermore, we find that our concerns which we set forth in our Directive dated October 15, 2009, have been resolved as SafeLink has committed that it will contribute to the State Universal Service Fund.

Based upon the foregoing and the record established in this proceeding, we find and order the following:

1. SafeLink Wireless has met all applicable requirements for designation as an Eligible Telecommunications Carrier for the limited purpose of providing Lifeline service to low-income South Carolina households, including those requirements codified at 47 U.S.C. § 214(e).

2. SafeLink Wireless is designated as an ETC, as of the effective date of this Order, with a service area covering the State.

3. Designation of SafeLink Wireless as an Eligible Telecommunications Carrier will serve the public interest.

4. SafeLink Wireless will provide all required universal service functionalities set forth in the Communications Act of 1934, as amended and the rules and regulations of the Federal Communications Commission and the Commission.

5. The verified testimony of SafeLink Wireless witness F. J. Pollak is accepted into the record without objection.

6. SafeLink Wireless shall submit a progress report on its two-year plan that describes the carrier's plans for advertising and outreach programs for identifying, qualifying, and enrolling eligible participants in the Lifeline programs.

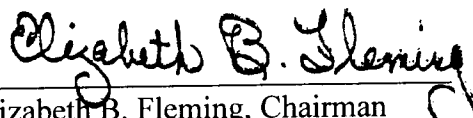
7. All federal USF funding received as a result of this Order will be used for Lifeline support and will be flowed through to the direct benefit of eligible low income customers.

8. The Joint Proposal filed with the Commission on December 16, 2009, and attached hereto as Appendix One, is accepted into the record, adopted and incorporated into and part of this Order by reference and, based upon the testimony and exhibits in the record, is found to be in the public interest and constitutes a reasonable resolution of this proceeding.

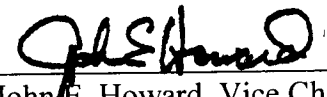
9. SafeLink Wireless shall comply with all Commission orders, rules and regulations and laws of the State of South Carolina.

10. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:


Elizabeth B. Fleming, Chairman

ATTEST:


John E. Howard, Vice Chairman
(SEAL)

PROPOSAL

TracFone Wireless, Inc. ("TracFone") has applied to the South Carolina Public Service Commission ("PSC" or "Commission") for designation as an Eligible Telecommunications Carrier ("ETC") for the limited purpose of providing Lifeline service to low-income South Carolina households. If designated as an ETC, TracFone would use support from the federal Universal Service Fund ("Federal USF") to provide its SafeLink Wireless® Lifeline service, consisting of free wireless handsets and free monthly allotments of minutes of wireless airtime. It would not seek and would not accept support from the South Carolina Universal Service Fund ("State USF").

Background. Under prior decisions of the PSC, commercial mobile service providers (wireless carriers) are not required to contribute to the State USF. However, the PSC has established a limited exception to the general inapplicability to wireless carriers of the State USF contribution requirement. If a wireless carrier is designated as a Carrier of Last Resort or as an ETC, it is deemed by the PSC to be indicating intent to compete with wireline local exchange carriers and is required to contribute to the State USF. Where one company owns both a carrier which has been designated as an ETC and therefore subject to State USF contribution obligations, and a wireless carrier which is not an ETC and therefore not subject to State USF contribution obligations, the ETC is required to contribute to the State USF based on intrastate revenues paid to it by its customers. The commonly-owned wireless carrier is not required to contribute. For example, AT&T Communications owns both BellSouth -- an ETC, and AT&T Mobility -- a major provider of wireless service in South Carolina (and a significant competitor of TracFone), but not an ETC. AT&T/BellSouth -- the incumbent local exchange carrier (ILEC) -- is required to contribute to the State USF on its intrastate telecommunications service revenues. However, AT&T Mobility -- AT&T's wireless provider -- is not required to contribute to the State USF.

Proposal. TracFone will establish a separate and distinct corporate affiliate. That company may be named SafeLink Wireless of South Carolina, Inc., or another similar name. TracFone will file in the current ETC docket (Docket No. 2009-144-C) an amendment to its pending ETC application assigning that application to the new entity which will adopt the application in all respects. Simultaneously, it will file this agreement which has been executed by TracFone and ORS. It will also file verified testimony which describes the transaction and the newly-established company. The Commission will then issue a notice inviting comment on the proposed assignment of the ETC application to the new company and on the agreement. If no comments are received within the notice period, the Company may request the Commission to act on the amended application without holding a hearing. SafeLink Wireless of South Carolina, Inc.'s only business activity will be to provide SafeLink Wireless Lifeline service to qualified low-income South Carolina households. Like other wireless ETCs, SafeLink Wireless of South Carolina will be required to contribute to the State USF on revenues earned from South Carolina consumers. Like other wireless carriers operating in South Carolina, TracFone will not be required to contribute to the State USF. SafeLink Wireless of South Carolina, Inc. will not be entitled to receive support from the State

USF. SafeLink Wireless of South Carolina, Inc. will be subject to all South Carolina laws, regulations and policies governing ETCs in general and the provision of Lifeline service in particular.

Lifeline customers of SafeLink Wireless of South Carolina, Inc. will receive free wireless handsets and 65 minutes of free airtime per month. In addition, those customers will be allowed to acquire additional minutes of wireless airtime by purchasing any TracFone airtime product sold at retail vendors in South Carolina (as well as other states). However, TracFone's computer system will identify the purchasers as SafeLink Wireless of South Carolina, Inc. customers at the time of activation and will provide sufficient additional minutes such that the price paid by SafeLink Wireless of South Carolina, Inc. customers never exceeds \$0.10 per minute, irrespective of the face price of the purchased airtime card.

SafeLink will verify that each consumer is eligible to participate in the Lifeline program by requiring each customer to certify at the time of service activation and annually thereafter that the customer meets the following criteria: 1) the customer is the head of household; 2) the customer meets the Lifeline eligibility requirements of South Carolina and; 3) the customer receives Lifeline supported service from only SafeLink. SafeLink may not use a statistically valid sample procedure to annually verify the customer meets the above criteria. However, the parties to this agreement recognize that TracFone has filed with the Federal Communications Commission ("FCC") a petition requesting modification to the condition imposed by the FCC that TracFone verify annually that each of its Lifeline customers remains head of household and receives Lifeline-supported service only from TracFone. In the event that the FCC grants that petition, the parties acknowledge that TracFone may then seek Commission approval of annual verification procedures consistent with those approved by the FCC.

In order to implement the proposal described in the preceding paragraph, TracFone has asked the Federal Communications Commission (FCC) to affirm that its exercise of its authority to forbear from application or enforcement of the facilities-based service requirement for ETCs codified at Section 214(e)(1)(A) of the Communications Act of 1934, as amended, and Section 54.201(i) of the FCC's rules with respect to TracFone would be applicable to TracFone and to commonly-owned affiliates and subsidiaries of TracFone including, for example, SafeLink Wireless of South Carolina, Inc. The FCC has confirmed that the Forbearance and associated conditions will apply to SafeLink Wireless of South Carolina. TracFone will provide an affidavit to ORS to this effect. Under this proposal, TracFone and SafeLink Wireless of South Carolina, Inc. will agree and will represent to the FCC and to the PSC that all conditions and limitations imposed on TracFone by the FCC in its 2005 order granting forbearance will be applicable to all affiliates and subsidiaries, including SafeLink Wireless of South Carolina, Inc. This would include such conditions as the requirement that all customers are provided with E911-compliant handsets and that the ETC obtain certification that its customers will have access to 911 and E911 without regard to activation status or availability of prepaid minutes. The ETC would also be required to verify annually that its customers remain head of household and only receive Lifeline-supported service from TracFone. The FCC staff has notified TracFone that the FCC's Forbearance Order,

including the conditions contained in that order, is applicable to TracFone and to affiliated companies.

ORS will support the application of SafeLink Wireless of South Carolina, Inc. for designation as a Lifeline-only ETC and will recommend to the PSC that SafeLink Wireless of South Carolina, Inc.'s application for ETC designation be approved subject to the following conditions:

a) SafeLink will provide a quarterly report to ORS and the Commission which identifies the aggregate number of Lifeline customers by county receiving SafeLink service during the quarter, the method of eligibility verification provided by the customer at service activation (TANF, Medicaid, Foodstamps), the aggregate number of Lifeline customers by county annually verified during the reporting period and the outcome of the verification process (pass/fail).

b) One year following the Commission's order designating the new company as an ETC, representatives of the company and ORS will meet to review the Lifeline program.